

Conference Engrossed

State of Arizona  
House of Representatives  
Forty-fifth Legislature  
Second Regular Session  
2002

CHAPTER 272

# HOUSE BILL 2396

AN ACT

AMENDING SECTIONS 44-6551, 44-6552, 44-6554, 44-6555 AND 44-6561, ARIZONA  
REVISED STATUTES; RELATING TO CHARITABLE SOLICITATIONS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

Be it enacted by the Legislature of the State of Arizona:

Section 1. Section 44-6551, Arizona Revised Statutes, is amended to read:

44-6551. Definitions

In this article, unless the context otherwise requires:

1. "Charitable organization" means either of the following:

(a) A person determined by the internal revenue service to be a tax exempt organization pursuant to section 501(c)(3) of the internal revenue code.

(b) A person who is or who holds himself IS HELD out to be established for a benevolent, educational, philanthropic, humane, scientific, patriotic, social welfare or advocacy, public health, environmental conservation, civic or other eleemosynary purpose or a person who in any manner employs a charitable appeal as the basis of a solicitation.

2. "Charitable purpose" means either of the following:

(a) A purpose described in section 501(c)(3) of the internal revenue code.

(b) A benevolent, educational, philanthropic, humane, scientific, patriotic, social welfare or advocacy, public health, environmental conservation, civic or other eleemosynary objective.

3. "Contracted fund raiser" means a person who for profit either solicits directly or employs, procures or engages another person to solicit for a charitable organization. A contracted fund raiser does not include a lawyer, investment counselor or banker who advises a person to make a charitable contribution, a bona fide salaried officer, employee or volunteer of a charitable organization or a person the contracted fund raiser employs, procures or engages to solicit.

4. "Contribution" means the grant, promise or pledge of any money, credit, property, financial assistance or other thing of any kind or value in response to a solicitation. Contribution does not include bona fide fees, dues or assessments paid for membership in the charitable organization.

5. "INDEPENDENT SOLICITOR" MEANS A PERSON WHO FOR PROFIT ENGAGES TO SOLICIT ON BEHALF OF A CHARITABLE ORGANIZATION OR ON BEHALF OF A CONTRACTED FUND RAISER.

5. 6. "Solicit" and "solicitation" means a request of any kind for a contribution or a request for the purchase of goods, tickets or services for a charitable purpose.

Sec. 2. Section 44-6552, Arizona Revised Statutes, is amended to read:

44-6552. Charitable organizations; registration; violation; classification

A. Except as provided in subsection D- E of this section and section 44-6553, before soliciting its first contribution, whether through a contracted fund raiser or otherwise and each September thereafter, a charitable organization shall file a registration statement with the

1 secretary of state in a format prescribed and adopted by the secretary of  
2 state by rule.

3 B. IF THE INTERNAL REVENUE SERVICE DETERMINES THAT A PERSON IS A  
4 CHARITABLE ORGANIZATION EXEMPT FROM FEDERAL INCOME TAXES PURSUANT TO SECTION  
5 501(c)(3) OF THE INTERNAL REVENUE CODE, THEN AT THE TIME OF ITS INITIAL  
6 REGISTRATION UNDER THIS SECTION, THE ORGANIZATION SHALL SUBMIT TO THE  
7 SECRETARY OF STATE A COPY OF THE INTERNAL REVENUE SERVICE'S WRITTEN  
8 DETERMINATION THAT IT IS EXEMPT FROM TAXES.

9 C. The secretary of state shall file and preserve all information  
10 required to be filed with the secretary of state pursuant to this section for  
11 five years from the date of filing, after which the information may be  
12 destroyed. This information is public information and is open to public  
13 inspection.

14 D. The secretary of state may deliver by certified mail a notice  
15 of failure to file a registration statement pursuant to this section to any  
16 charitable organization that is required to file a registration statement and  
17 that fails to comply with the registration requirements of this section. The  
18 charitable organization shall comply with the registration requirements of  
19 this section within thirty days after receiving the notice from the secretary  
20 of state and shall pay a late registration penalty of twenty-five dollars.  
21 If the charitable organization does not comply with the requirements of this  
22 subsection, the charitable organization is guilty of a class 1 misdemeanor.

23 E. Instead of filing any financial disclosure information  
24 prescribed by the secretary of state pursuant to this section, a tax exempt  
25 organization pursuant to section 501(c)(3) of the internal revenue code may  
26 either:

27 1. File with the secretary of state a copy of the organization's  
28 annual information return FOR THE PRECEDING FISCAL YEAR as defined in the  
29 internal revenue code and applicable regulations.

30 2. Provide the secretary of state with the address on the internet  
31 where the organization's annual information return is available.

32 F. Any charitable organization that is a bona fide and duly  
33 constituted religious institution and any other entity that is an integral  
34 part of a religious institution shall file the registration statement  
35 prescribed in this section but is not required to file any financial  
36 disclosure information prescribed by the secretary of state pursuant to this  
37 section if all of the following apply:

38 1. The religious institution or entity is a tax exempt institution or  
39 entity pursuant to the internal revenue code.

40 2. No part of the religious institution's or entity's net income  
41 inures to the direct benefit of any individual.

42 3. The religious institution or entity only solicits monies from the  
43 institution's or entity's membership, congregation or previous donors and the

1 institution's or entity's conduct and fees charged for services are primarily  
2 supported and paid through government grants or contracts.

3 G. THE SECRETARY OF STATE MAY DENY AN APPLICATION FOR REGISTRATION OF  
4 THE NAME OF A CHARITABLE ORGANIZATION IF:

5 1. THE NAME MIGHT MISLEAD THE PUBLIC OR IS NOT READILY DISTINGUISHABLE  
6 FROM ONE OR MORE NAMES THAT ARE CURRENTLY REGISTERED UNDER THIS ARTICLE.

7 2. THE NAME IS THE SAME AS OR DECEPTIVELY SIMILAR TO:

8 (a) AN EXISTING CORPORATE NAME OR A CORPORATE NAME RESERVED PURSUANT  
9 TO TITLE 10, CHAPTER 4, 18 OR 22.

10 (b) THE NAME OF A LIMITED PARTNERSHIP ORGANIZED UNDER THE LAWS OF THIS  
11 STATE OR LICENSED OR REGISTERED AS A FOREIGN LIMITED LIABILITY COMPANY,  
12 AUTHORIZED TO TRANSACT BUSINESS IN THE STATE OR A NAME THAT IS REGISTERED  
13 PURSUANT TO CHAPTER 10, ARTICLE 3 OR 3.1 OF THIS TITLE.

14 H. THE SECRETARY OF STATE MAY DENY AN APPLICATION FOR REGISTRATION OR  
15 MAY REVOKE THE REGISTRATION OF A CHARITABLE ORGANIZATION FOR ANY OF THE  
16 FOLLOWING REASONS:

17 1. SUBSTANTIAL AND MATERIAL MISSTATEMENT OR OMISSION IN THE SUBMITTED  
18 APPLICATION.

19 2. CONVICTION OF A FELONY SUBSTANTIALLY RELATED TO SOLICITATION BY ANY  
20 EMPLOYEE, MEMBER, OFFICER OR DIRECTOR WHO HAS ANY SOLICITATION  
21 RESPONSIBILITIES ON BEHALF OF THE ORGANIZATION OR ANY OTHER PERSON HOLDING  
22 ANY PROPRIETARY OR BENEFICIAL INTEREST IN THE CHARITABLE ORGANIZATION, UNLESS  
23 THE CIVIL RIGHTS HAVE BEEN RESTORED.

24 3. AN ORDER OR JUDGMENT BY A COURT IN ANY JURISDICTION THAT THE  
25 CHARITABLE ORGANIZATION HAS ENGAGED IN DECEPTIVE, FRAUDULENT OR UNLAWFUL  
26 BUSINESS PRACTICES THAT SUBSTANTIALLY RELATE TO SOLICITATION.

27 4. VIOLATING ANY PROVISION OF THIS ARTICLE.

28 5. THE RETURN OF A CHECK ISSUED TO THE ORDER OF THE SECRETARY OF STATE  
29 DUE TO INSUFFICIENT FUNDS OR ANY OTHER REASON FOR NONPAYMENT.

30 I. IF THE SECRETARY OF STATE DENIES AN APPLICATION, THE SECRETARY OF  
31 STATE SHALL NOTIFY THE APPLICANT WITHIN TEN DAYS AFTER RECEIVING THE  
32 APPLICATION AND SHALL STATE THE REASONS FOR THE DENIAL.

33 Sec. 3. Section 44-6554, Arizona Revised Statutes, is amended to read:

34 44-6554. Contracted fund raisers; registration, reregistration,  
35 contract and disclosure requirements

36 A. A contracted fund raiser shall register with the secretary of state  
37 before engaging in a solicitation on behalf of a charitable organization,  
38 even if the charitable organization is exempt pursuant to section 44-6553  
39 from the registration requirements prescribed in section 44-6552. Applications  
40 for registration or reregistration shall be in writing, under  
41 oath, in the form prescribed by the secretary of state and accompanied by a  
42 fee of twenty-five dollars. The application shall contain information  
43 required by the secretary of state, including a list of all states in which  
44 the contracted fund raiser conducts fund raising activities and the agency

1 in each state that licensed, registered or certified the contracted fund  
2 raiser. A registration is valid for one year and may be renewed for  
3 additional one year periods on application and payment of the fee.

4 B. Notwithstanding section 35-155, at the time of applying for  
5 registration and renewal of registration, a contracted fund raiser shall file  
6 with and have approved by the state treasurer a bond in which the contracted  
7 fund raiser is the principal obligor in the amount of twenty-five thousand  
8 dollars, with one or more responsible sureties whose liability in the  
9 aggregate as sureties at least equals that amount. The contracted fund  
10 raiser shall maintain the bond in effect as long as the registration is in  
11 effect. The bond, which may be in the form of a rider to a larger blanket  
12 liability bond, shall run to the state and to a person who may have a cause  
13 of action against the principal obligor of the bond for any liabilities  
14 resulting from the obligor's conduct of any activities subject to this  
15 article or arising out of a violation of this article or any rule adopted  
16 pursuant to this article.

17 C. THE SECRETARY OF STATE MAY DENY AN APPLICATION FOR REGISTRATION OR  
18 MAY REVOKE THE REGISTRATION OF A CONTRACTED FUND RAISER FOR ANY OF THE  
19 FOLLOWING REASONS:

20 1. SUBSTANTIAL AND MATERIAL MISSTATEMENT OR OMISSION IN THE SUBMITTED  
21 APPLICATION.

22 2. CONVICTION OF A FELONY SUBSTANTIALLY RELATED TO SOLICITATION BY ANY  
23 EMPLOYEE, MEMBER, OFFICER OR DIRECTOR WHO HAS ANY SOLICITATION  
24 RESPONSIBILITIES ON BEHALF OF THE ORGANIZATION OR ANY OTHER PERSON HOLDING  
25 ANY PROPRIETARY OR BENEFICIAL INTEREST IN THE CONTRACTED FUND RAISER, UNLESS  
26 THE CIVIL RIGHTS HAVE BEEN RESTORED.

27 3. AN ORDER OR JUDGMENT BY A COURT IN ANY JURISDICTION THAT THE  
28 CONTRACTED FUND RAISER HAS ENGAGED IN DECEPTIVE, FRAUDULENT OR UNLAWFUL  
29 BUSINESS PRACTICES THAT SUBSTANTIALLY RELATE TO SOLICITATION.

30 4. VIOLATING ANY PROVISION OF THIS ARTICLE.

31 5. THE RETURN OF A CHECK ISSUED TO THE ORDER OF THE SECRETARY OF STATE  
32 DUE TO INSUFFICIENT FUNDS OR ANY OTHER REASON FOR NONPAYMENT.

33 D. IF THE SECRETARY OF STATE DENIES AN APPLICATION, THE SECRETARY OF  
34 STATE SHALL NOTIFY THE APPLICANT WITHIN TEN DAYS AFTER RECEIVING THE  
35 APPLICATION AND SHALL STATE THE REASONS FOR THE DENIAL.

36 ~~E.~~ E. There shall be a written contract between a contracted fund  
37 raiser and a charitable organization that clearly states the respective  
38 obligations of the contracted fund raiser and the charitable organization and  
39 the compensation terms of the contracted fund raiser.

40 ~~F.~~ F. Before the commencement of a solicitation campaign for a  
41 charitable organization the contracted fund raiser shall file with the  
42 secretary of state a completed solicitation notice on forms prescribed by the  
43 secretary of state. The solicitation notice shall include:

1           1. A copy of the contract described in subsection ~~C~~ E of this  
2 section.

3           2. The projected dates when solicitation will commence and terminate.

4           3. The location and telephone number from which the solicitation will  
5 be conducted.

6           4. The name and residence address of each person responsible for  
7 directing and supervising the conduct of the solicitation campaign.

8           5. A statement as to whether the contracted fund raiser will have  
9 custody of contributions at any time.

10          6. A full description of the charitable program for which the  
11 solicitation campaign is being carried out and, if different, a description  
12 of the programs and activities of the organization on whose behalf the  
13 solicitation campaign is being carried out.

14          ~~E~~. G. A contracted fund raiser is responsible for complying with, or  
15 for causing compliance with, both of the following restrictions:

16           1. It shall not be represented that any part of the contributions  
17 received will be given or donated to another charitable organization unless  
18 that organization has consented in writing to the use of its name before the  
19 solicitation.

20           2. It shall not be represented that tickets to events will be donated  
21 for use by another unless the following requirements are met:

22           (a) The contracted fund raiser has a written commitment from a  
23 charitable organization stating that it will accept donated tickets and  
24 specifying the number of tickets it is willing to accept.

25           (b) Contributions for donated tickets are not solicited in excess of  
26 the number of ticket commitments received from a charitable organization.

27          ~~F~~. H. Within ninety days after the solicitation campaign covered by  
28 the written contract prescribed in subsection ~~C~~ E of this section has been  
29 completed and on the anniversary of the commencement of a solicitation  
30 campaign lasting more than one year, the contracted fund raiser shall file  
31 with the secretary of state a financial report for the campaign, including  
32 gross revenue and an itemization of all the identifiable expenses incurred.  
33 The report shall be completed on a form prescribed by the secretary of state  
34 and shall be signed by an authorized official of the contracted fund raiser  
35 who certifies, under oath, that it is true to the best of the contracted fund  
36 raiser's knowledge.

37          ~~G~~. I. The contracted fund raiser shall maintain, during each  
38 solicitation campaign and for at least three years after its completion, the  
39 following records:

40           1. The name and, if known to the contracted fund raiser, the address  
41 of each person pledging to contribute together with the date and amount of  
42 the pledge.

43           2. The name and residence address of each employee, agent or other  
44 person involved in the solicitation.

1           3. A record of all contributions at any time in the custody of the  
2 contracted fund raiser.

3           4. A record of all expenses incurred by the contracted fund raiser for  
4 which the charitable organization is liable for payment.

5           5. The location and account number of all bank or other financial  
6 institution accounts in which the contracted fund raiser has deposited  
7 revenue from the solicitation campaign.

8           ~~H.~~ J. If the contracted fund raiser sells tickets to an event and  
9 represents that tickets will be donated for use by another, the contracted  
10 fund raiser shall also maintain for the same period as specified in  
11 subsection ~~G~~ I of this section all of the following:

12           1. A copy of the written commitment required by subsection ~~F~~ G of  
13 this section.

14           2. The name NAMES and address ADDRESSES of the contributors donating  
15 tickets and the number of tickets donated by each contributor.

16           3. The name NAMES and address ADDRESSES of all organizations receiving  
17 donated tickets for use by others, including the number of tickets received  
18 by each organization.

19           ~~I.~~ K. All records described in subsections ~~G~~ and ~~H~~ I AND J of this  
20 section shall be available for inspection by the secretary of state on  
21 request.

22           ~~J.~~ L. Each contribution in the custody of the contracted fund raiser,  
23 in its entirety and within seven business days of its receipt, shall be  
24 deposited in an account at a bank or other federally insured financial  
25 institution. The account shall be in the name of the charitable organization  
26 with which the contracted fund raiser has contracted, and the charitable  
27 organization shall have sole control of all withdrawals from the account  
28 unless the contracted fund raiser and the charitable organization have  
29 entered into a written agreement concerning the disposition of contributions.

30           ~~K.~~ M. Any material change in any information filed with the secretary  
31 of state pursuant to this section, including any material change to the  
32 contract prescribed in subsection ~~F~~ E of this section, shall be reported in  
33 writing to the secretary of state within sixty days of the change pursuant  
34 to rules adopted by the secretary of state.

35           ~~L.~~ N. The secretary of state shall examine each contracted fund  
36 raiser registration application and solicitation notice to determine whether  
37 the applicable requirements of this article relating to the contracted fund  
38 raiser registration application and solicitation notice are satisfied. The  
39 secretary of state shall notify the contracted fund raiser within ten  
40 business days of its receipt of any deficiencies in the contracted fund  
41 raiser registration application and solicitation notice or it is deemed  
42 approved as filed.

1       Sec. 4. Section 44-6555, Arizona Revised Statutes, is amended to read:  
2       44-6555. Solicitation disclosure requirements; written  
3               confirmation

4       A. A contracted fund raiser soliciting in this state OR ANYONE ACTING  
5       ON BEHALF OF THE CONTRACTED FUND RAISER shall disclose substantially both of  
6       the following at any time during the solicitation:

7       1. The name of the charitable organization.

8       2. The name of the contracted fund raiser as on file with the  
9       secretary of state and the fact that the contracted fund raiser, for  
10      compensation, is conducting the solicitation on behalf of a charitable  
11      organization.

12      B. If a solicitation campaign by a contracted fund raiser is conducted  
13      orally, whether by telephone or otherwise, a written confirmation shall be  
14      provided to each person who has contributed or pledged to contribute, within  
15      five business days after that person has been solicited, that contains  
16      substantially all of the following information:

17      1. The information required by subsection A in a clear and conspicuous  
18      manner.

19      2. That information filed with the secretary of state pursuant to this  
20      article is available for public inspection.

21      3. The toll free telephone number of the secretary of state.

22      C. If a written solicitation is used by a contracted fund raiser, all  
23      of the disclosures required by this section shall be provided when the  
24      written solicitation is made.

25      D. DURING THE SOLICITATION, WHETHER BY TELEPHONE OR OTHERWISE,  
26      INDEPENDENT SOLICITORS SHALL:

27      1. IDENTIFY THEMSELVES AS FOR-PROFIT SOLICITORS WHO ARE SOLICITING ON  
28      BEHALF OF A CHARITABLE ORGANIZATION OR A CONTRACTED FUND RAISER.

29      2. DISCLOSE THE LEGAL NAME OF THE CHARITABLE ORGANIZATION OR  
30      CONTRACTED FUND RAISER ON WHOSE BEHALF THE INDEPENDENT SOLICITOR IS MAKING  
31      THE SOLICITATION.

32      3. DISCLOSE THE INDEPENDENT SOLICITOR'S TRUE LEGAL NAME.

33      4. STATE THAT THE PURPOSE OF THE SOLICITATION IS TO RAISE CHARITABLE  
34      FUNDS.

35      Sec. 5. Section 44-6561, Arizona Revised Statutes, is amended to read:  
36      44-6561. Unlawful acts or practices; violation; classification;

37               civil penalty

38      A. The following acts and practices are unlawful as applied to the  
39      planning, conduct or execution of a solicitation and constitute unlawful  
40      practices under section 44-1522 that the attorney general may investigate and  
41      for which he may take appropriate action as prescribed by chapter 10, article  
42      7 of this title:



1        1. Knowingly utilizing an emblem, device or printed matter belonging  
2 to or associated with a charitable organization without first being  
3 authorized in writing to do so by the charitable organization.

4        2. Knowingly utilizing a name, symbol or statement so closely related  
5 or similar to that used by another charitable organization for the purpose  
6 of misleading a solicited person.

7        3. Knowingly making a misrepresentation to a person that the person  
8 on whose behalf a solicitation is being conducted is a charitable  
9 organization.

10       4. Knowingly making a representation to a person that another person  
11 sponsors, endorses or approves the solicitation if the other person has not  
12 given consent in writing to the use of his name for these purposes.

13       5. Knowingly representing to a person that the registration  
14 constitutes an endorsement or approval by this state.

15       B. Except as provided in SECTION 44-6652, SUBSECTION D OR subsection  
16 C of this section, a person who fails to register or provide reports as  
17 provided by this article or who otherwise fails to comply with any provision  
18 of this article is guilty of a class 1 misdemeanor.

19       C. A contracted fund raiser who knowingly conducts any act or practice  
20 proscribed in subsection A of this section is guilty of a class 6 felony.

21       D. AN INDEPENDENT SOLICITOR WHO KNOWINGLY CONDUCTS ANY ACT OR PRACTICE  
22 PRESCRIBED IN SUBSECTION A OF THIS SECTION OR WHO FAILS TO COMPLY WITH  
23 SECTION 44-6555, SUBSECTION D IS GUILTY OF A CLASS 1 MISDEMEANOR.

24       ~~D.~~ E. In addition to the criminal offenses provided in subsections  
25 B, and C AND D of this section, if a person conducts an act or practice  
26 proscribed in subsection A of this section, the attorney general may recover  
27 from the person on behalf of the state a civil penalty of not more than one  
28 thousand dollars per violation. The civil penalty prescribed by this  
29 subsection is in lieu of the penalty prescribed by section 44-1531.


APPROVED BY THE GOVERNOR MAY 21, 2002.

FILED IN THE OFFICE OF THE SECRETARY OF STATE MAY 22, 2002.

Passed the House March 27, 2002,

by the following vote: 48 Ayes,

8 Nays, 4 Not Voting


  
Speaker of the House


  
Chief Clerk of the House

Passed the Senate April 17, 2002,

by the following vote: 29 Ayes,

0 Nays, 1 Not Voting

  
President of the Senate

  
Secretary of the Senate

EXECUTIVE DEPARTMENT OF ARIZONA  
OFFICE OF GOVERNOR

This Bill was received by the Governor this

\_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_,

at \_\_\_\_\_ o'clock \_\_\_\_\_ M.

\_\_\_\_\_  
Secretary to the Governor

Approved this \_\_\_\_\_ day of

\_\_\_\_\_, 20\_\_\_\_,

at \_\_\_\_\_ o'clock \_\_\_\_\_ M.

\_\_\_\_\_  
Governor of Arizona

H.B. 2396

EXECUTIVE DEPARTMENT OF ARIZONA  
OFFICE OF SECRETARY OF STATE

This Bill was received by the Secretary of State

this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_,

at \_\_\_\_\_ o'clock \_\_\_\_\_ M.

\_\_\_\_\_  
Secretary of State

HOUSE FINAL PASSAGE  
as per Joint Conference

Passed the House May 15, 2002,

by the following vote: 58 Ayes,

0 Nays, 2 Not Voting

[Signature]  
Speaker of the House

Norman L. Moore  
Chief Clerk of the House

SENATE FINAL PASSAGE  
as per Joint Conference

Passed the Senate May 16, 2002,

by the following vote: 27 Ayes,

0 Nays, 3 Not Voting

[Signature]  
President of the Senate

Charmine Billington  
Secretary of the Senate

EXECUTIVE DEPARTMENT OF ARIZONA  
OFFICE OF GOVERNOR

This Bill was received by the Governor

this 17 day of May, 2002

at 8:45 o'clock A M.

[Signature]  
Secretary to the Governor

Approved this 21st day of

May, 2002,

at 10:14 o'clock A M.

[Signature]  
Governor of Arizona

EXECUTIVE DEPARTMENT OF ARIZONA  
OFFICE OF SECRETARY OF STATE

This Bill was received by the Secretary of State

this 22 day of May, 2002

at 12:13 o'clock P. M.

[Signature]  
Secretary of State

H.B. 2396